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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

**DELEGATES TO THE REPUBLICAN
NATIONAL CONVENTION ET AL.,**

Plaintiffs,

vs.

**REPUBLICAN NATIONAL
COMMITTEE ET AL.,**

Defendants.

Case No.: SACV 12-00927 DOC(JPRx)

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

Section 1971 of Title 42 of the United States Code is part of a landmark civil rights statutory scheme, commonly referred to as the “Voting Rights Act,” which Congress enacted to end the violence and discrimination that plagued minority voters in Congressman Ron Paul’s home state of Texas and other parts of this country. *See McCain v. Lybrand*, 465 U.S. 236, 243, 243 n.11 (1984); *Morse v. Republican Party of Virginia*, 517 U.S. 186, 213 (1996) (“Congress passed the Voting Rights Act of 1964 because it concluded that case-by-case enforcement of the Fifteenth Amendment, as exemplified by the history of the white primary in Texas, had proved ineffective to stop discriminatory voting practices in certain areas of the country.”); *South*

1 *Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966) (“The Voting Rights Act was designed by
 2 Congress to banish the blight of racial discrimination in voting, which has infected the electoral
 3 process in parts of our country for nearly a century.”); Elections, 13D Fed. Prac. & Proc. Juris. §
 4 3576 (3d ed.) (citing 42 U.S.C. § 1971 as part of comprehensive legislation “to provide effective
 5 remedies against discrimination in the conduct of elections” that began “with the Civil Rights
 6 Act of 1957, and with broadening amendments in 1960, 1964, 1965, and 1970”). “The historic
 7 accomplishments of the Voting Rights Act are undeniable.” *Nw. Austin Mun. Util. Dist. No.*
 8 *One v. Holder*, 557 U.S. 193, 201 (2009). “When it was first passed, unconstitutional
 9 discrimination was rampant and the ‘registration of voting-age whites ran roughly 50 percentage
 10 points or more ahead’ of black registration in many covered States.” *Id.*; see also *Nixon v.*
 11 *Herndon*, 273 U.S. 536, 541 (1927) (lawsuit challenging Texas statute “forbid[ding] negroes to
 12 take part in a primary election”).

13 Six years ago, Congressman Ron Paul voted against reauthorizing the Voting Rights
 14 Act.¹ Ironically, his supporters now bring this lawsuit under the very statutory scheme he tried
 15 to end.

16 After reviewing the moving papers and oral argument, the Court GRANTS Defendants’
 17 Motion to Dismiss (Dkt. 7), but dismisses WITHOUT PREJUDICE. Because the Court grants
 18 Defendants’ Motion to Dismiss, the Court also DENIES Plaintiffs’ Ex Parte Application to
 19 Expedite Trial (Dkt. 16).

20 **I. Background**

21 The gravamen of Plaintiffs’ First Amended Complaint (“FAC”) is that Defendants have
 22 engaged in various acts—often too vaguely described to be intelligible—that have
 23 disadvantaged Ron Paul in his quest to be nominated as the Republican Party’s candidate for
 24 President at the Republican National Convention commencing on August 27, 2012.

25 **a. Parties**

27 ¹ See Final Vote Results For Roll Call 374, <http://clerk.house.gov/evs/2006/roll374.xml>
 28 (reflecting vote on July 13, 2006).

1 The FAC describes the Plaintiffs as: (1) “National Delegates”; (2) “Alternate National
2 Delegates”; and (3) “State Delegates who elected National Delegates.” FAC at 24:4-19. The
3 National and Alternate National Delegates include “Delegates duly elected but having their
4 Certification [sic] withdrawn.” *Id.* at 24:15.

5 The FAC describes the Defendants as: (1) the Republican National Committee (“RNC”);
6 (2) RNC’s Chairman, Reince Priebus; (3) “every State Republican Party and party Chairman
7 within the Jurisdiction of the Ninth Circuit”; and (4) “State Republican Party Organizations
8 participating in a Federal Election for the purpose of nominating a candidate for President of the
9 United States and a candidate for Vice President of the United States.” *Id.* at 24:15.

10 **b. Allegations**

11 While the FAC’s allegations are often duplicative and unclear, they appear to be as
12 follows:

- 13 • “Defendants have unlawfully used State Bylaws.” *Id.* at 27:5-6.
- 14 • “Defendants have refused to Certify [sic] Delegates who were properly elected.” *Id.* at
15 27:7-8.
- 16 • “[I]n almost every state in the United States[,] Defendants engaged in a scheme to
17 intimidate and harass Delegates who were supporting a Candidate that Defendants did not
18 approve of. This harassment included the use of violence, intimidating demands that
19 Delegates sign affidavits under penalty of perjury with the threat of criminal prosecution
20 for perjury as well as financial penalties and fines if the Delegate fails to vote as
21 instructed by Defendants.” *Id.* at 26:21-26.
- 22 • “Defendants have further harassed and intimidated Plaintiffs with untimely Rule changes
23 designed to deny a quorum or to manipulate Delegates supporting a particular Candidate
24 to be deprived of a fair election in furtherance of a scheme to deny Plaintiffs the right to
25 vote their conscience on all ballots.” *Id.* at 26:27-28, 27:1-2.
- 26 • “Defendants have altered the voting ballot results to fraudulently reflect an outcome that
27 is inconsistent with the actual voting ballot results for the purpose of certifying a
28 fraudulently selected slate of Delegates to support the Candidate of Defendants [sic]

choice rather than the Delegates properly elected all to prevent Plaintiffs from voting their conscience.” *Id.* at 27:9-12.

- “[T]here is a systematic campaign of election fraud at State Conventions including programming a voting machine in Arizona to count Ron Paul votes as Governor Romney votes; ballot stuffing, meaning the same person casting several ballots in several State Conventions; altering procedural rules to prevent votes being cast for Ron Paul, all as acts of intimidation to prevent National Delegates from voting their conscience.” *Id.* at 33:10-15.
- “Bones have been broken. A gun has been used to threaten a Plaintiff to vote as ordered while inside of a school. Plaintiffs have been followed. Plaintiffs have been threatened with future life-time harassment if Plaintiffs do not vote as directed. Plaintiffs have been threatened to remove their names from this lawsuit or face adverse consequences.” *Id.* at 34:12-16.

The sole allegation that references a specific Defendant and specific Plaintiff appears on page 32. There, the FAC alleges that “Plaintiff Renato D’Amico is a duly elected National Delegate from the State of Massachusetts who was unlawfully removed from the State Delegation when he refused to sign” an affidavit “presented by Defendant Republican Party of Massachusetts” requiring him to “swear[] under penalty of perjury that he would vote for Governor Romney.” *Id.* at 32. The FAC alleges that, “[i]n Massachusetts[,] at least 17 Delegates duly elected were ordered to sign” the same affidavit even though “no Party Rule . . . permits such an [a]ffidavit nor such an ultimatum, nor has said Defendant ever required such an [a]ffidavit in the past.” *Id.* Plaintiffs “request an order of this Court reinstating Plaintiff Renato D’Amico to his duly elected position as a Certified National Delegate and further requests that all Massachusetts Delegates be reinstated who were removed solely for refusing to sign the unlawful [a]ffidavit.” *Id.*

c. Procedural history

On July 5, 2012, Defendants filed the present Motion to Dismiss. Mot. (Dkt. 7). Four days later, this Court denied Plaintiffs’ *ex parte* application but explained that, if Plaintiffs

wished to file an amended complaint containing the changes outlined in the ex parte application, Plaintiffs were free to do so. *See* July 9, 2012, Order (Dkt. 10). Plaintiffs filed the FAC, with is the operative pleading in this case, on July 11, 2012. FAC (Dkt. 12). The Court then granted Defendants' request to reinstate their Motion to Dismiss because the FAC added no new factual allegations or legal theories and instead only added new Plaintiffs. *See* July 12, 2012, Order (Dkt. 13).

II. Legal Standard

Under Federal Rule of Civil Procedure 12(b)(6), a complaint must be dismissed when a plaintiff's allegations fail to set forth a set of facts which, if true, would entitle the complainant to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (holding that a claim must be facially plausible in order to survive a motion to dismiss). The pleadings must raise the right to relief beyond the speculative level; a plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). On a motion to dismiss, this court accepts as true a plaintiff's well-pled factual allegations and construes all factual inferences in the light most favorable to the plaintiff. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). The court is not required to accept as true legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 678.

In evaluating a Rule 12(b)(6) motion, review is ordinarily limited to the contents of the complaint and material properly submitted with the complaint. *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994); *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). Under the incorporation by reference doctrine, the court may also consider documents "whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading." *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds by* 307 F.3d 1119, 1121 (9th Cir. 2002).

1 A motion to dismiss under Rule 12(b)(6) can not be granted based upon an affirmative
 2 defense unless that “defense raises no disputed issues of fact.” *Scott v. Kuhlmann*, 746 F.2d
 3 1377, 1378 (9th Cir. 1984). For example, a motion to dismiss may be granted based on an
 4 affirmative defense where the allegations in a complaint are contradicted by matters properly
 5 subject to judicial notice. *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010).
 6 In addition, a motion to dismiss may be granted based upon an affirmative defense where the
 7 complaint’s allegations, with all inferences drawn in Plaintiff’s favor, nonetheless show that the
 8 affirmative defense “is apparent on the face of the complaint.” *See Von Saher v. Norton Simon*
 9 *Museum of Art at Pasadena*, 592 F.3d 954, 969 (9th Cir. 2010).

10 Additionally, Federal Rule of Evidence 201 allows the court to take judicial notice of
 11 certain items without converting the motion to dismiss into one for summary judgment. *Barron*
 12 *v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994). The court may take judicial notice of facts “not
 13 subject to reasonable dispute” because they are either: “(1) generally known within the territorial
 14 jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to
 15 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201; *see also Lee v.*
 16 *City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (noting that the court may take judicial
 17 notice of undisputed “matters of public record”), *overruled on other grounds by* 307 F.3d 1119,
 18 1125-26 (9th Cir. 2002). The court may disregard allegations in a complaint that are
 19 contradicted by matters properly subject to judicial notice. *Daniels-Hall v. Nat’l Educ. Ass’n*,
 20 629 F.3d 992, 998 (9th Cir. 2010).

21 Dismissal without leave to amend is appropriate only when the court is satisfied that the
 22 deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353
 23 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (holding that
 24 dismissal with leave to amend should be granted even if no request to amend was made). Rule
 25 15(a)(2) of the Federal Rules of Civil Procedure states that leave to amend should be freely
 26 given “when justice so requires.” This policy is applied with “extreme liberality.” *Morongo*
 27 *Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990).

28 **III. Discussion**

Defendants argue that: (1) the First Amended Complaint (“FAC”) is too vague and conclusory to satisfy the pleading standard; and (2) to the extent that the FAC is intelligible, this Court should not adopt Plaintiffs’ interpretation of Section 1971(b) of the Voting Rights Act because it would violate Defendants’ First Amendment right of association. Plaintiffs do not substantively respond to these arguments and instead raise two procedural objections. The Court first addresses Plaintiffs’ objections and then turns to Defendants’ arguments.

a. Plaintiffs’ procedural objections do not address the merits of Defendants’ Motion to Dismiss

Plaintiffs’ Opposition opens with two arguments that this Court addresses briefly because they do not go to the merits of this case. First, Plaintiffs argue that Defendants failed to meet and confer with Plaintiffs prior to filing this Motion and in violation of Local Rule 7-3. Opp’n at 1-3. Even assuming this is true, Plaintiffs can hardly fault Defendants for failing to follow this Local Rule given that *Plaintiffs* repeatedly filed ex parte applications seeking orders from this Court without providing Defendants an opportunity to respond and in violation of Local Rule 7-19. *See e.g.*, July 9, 2012, Order (Dkt. 10) (denying Plaintiffs ex parte relief for, among other things, failure to follow Local Rule 7-19).

Second, Plaintiffs accuse Defendants’ attorneys of having a conflict of interest with their clients because “[s]everal Defendants in this case are duly elected party chairmen who are open supporters of Dr. Ron Paul.” Opp’n at 4. This argument fails for so many reasons, one of which is that a plaintiff can not defeat a motion to dismiss by simply casting aspersions on the defendant’s attorney. Rather, a plaintiff must engage the *merits* of the motion to show that the defendant has not actually met its burden.

b. With one exception, Plaintiffs’ allegations are not sufficiently intelligible for this Court to even analyze whether they can state a claim

A court considering a motion to dismiss “can choose to begin by identifying pleadings [within the complaint] that, because they are no more than conclusions, are not entitled to the assumption of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). In this section, the Court first explains why it will not consider at this late date the DVDs recently filed by Plaintiffs. The

1 Court next identifies those pleadings in the FAC that are conclusory or not sufficiently plausible.
 2 Finally, the Court concludes that only one page in the FAC contains allegations that are
 3 sufficiently intelligible for this Court to even analyze whether they can state a claim.

4 At the outset, the Court notes that it is profoundly difficult to discern Plaintiffs' legal
 5 theory because Plaintiffs' Opposition does not cite a single case regarding the Voting Rights
 6 Act, much less any case regarding election law or the First Amendment. However, the FAC
 7 itself suggests² and at oral argument Plaintiffs confirmed that Plaintiffs bring this action under
 8 Section 1971(b) of the Voting Rights Act. Section 1971(b) provides in relevant part that "[n]o
 9 person . . . shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any
 10 other person for the purpose of interfering with the right of such other person to . . . vote as he
 11 may choose . . . for the office of President . . . [or] Delegates . . . at any general . . . or primary
 12 election held . . . for the purpose of selecting or electing any such candidate." 42 U.S.C. §
 13 1971(b).³

14 **i. The Court can not consider Plaintiffs' late-filed DVDs**

17 ² See FAC at 26:3-7 (quoting language from Section 1971(b)).

18 ³ The FAC itself implies, and Defendants do not dispute, that 42 U.S.C. § 1971(b) provides
 19 plaintiffs with a private right of action for an injunction and declaratory relief. The Court has,
 20 on its own, found legal support for this conclusion. See *Brooks v. Nacrelli*, 331 F. Supp. 1350,
 21 1351-52 (E.D. Pa. 1971) (holding that, "although 42 U.S.C. § 1971(c) authorizes the Attorney
 22 General to institute an action for the United States to enjoin violations of [42 U.S.C.] § 1971(b),
 23 nevertheless a private action for violations of § 1971(b) also lies" for plaintiffs' class action
 24 seeking injunction and declaratory relief) *aff'd*, 473 F.2d 955 (3d Cir. 1973) (analyzing
 25 plaintiffs' Section 1971(b) claim); *cf. Olagues v. Russoniello*, 770 F.2d 791, 805 (9th Cir. 1985)
 26 (holding that 42 U.S.C. § 1791(b) provides no private action *for damages*, but leaving open the
 27 question of whether the statute provided a private action for equitable relief given legislative
 28 history and intent).

1 On a motion to dismiss, a district court may only consider additional material if it is
 2 judicially noticeable or “properly submitted as part of the complaint.” *Hal Roach Studios, Inc.*
 3 *v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1989). The Court reviews the
 4 Motion to Dismiss without considering the contents of several DVDs that Plaintiffs recently
 5 filed because these DVDs do not fall into either of these categories.

6 First, the contents of Plaintiffs’ DVDs—which appear to be testimony by various
 7 Plaintiffs—are not judicially noticeable because they are neither “generally known within the
 8 territorial jurisdiction of the trial court” nor “capable of accurate and ready determination by
 9 resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201; *see also*
 10 *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001).

11 Second, these DVDs were not properly submitted as part of the complaint because
 12 Plaintiffs filed them *after* Defendants moved to dismiss the FAC. Plaintiffs cannot defend
 13 against a motion to dismiss by relying on new allegations in their Opposition that are absent
 14 from the operative pleading. *See Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1107
 15 (7th Cir. 1984); *Nguyen v. JP Morgan Chase Bank*, No. SACV 11-01908 DOC (ANx), 2012
 16 U.S. Dist. LEXIS 12070, ay *9 (C.D. Cal. Feb. 1, 2012). The policy reason for this rule is two-
 17 fold. First, a court construes well-pled pleadings liberally on a motion to dismiss because the
 18 plaintiff’s attorney must certify that “factual contentions have evidentiary support,” and the
 19 attorney can be severely punished if this statement is later revealed to be false. *See* Federal Rule
 20 of Civil Procedure 11(b)(3). In contrast, allegations in material not attached to the complaint do
 21 not necessarily come with these enforceable promises by an attorney. Second, the purpose of a
 22 motion to dismiss is to provide the defendant with an opportunity to respond to the allegations
 23 against him; a defendant is denied this opportunity if a plaintiff can defeat a motion to dismiss
 24 by perpetually filing additional material not included in the complaint.

25 **ii. The FAC is riddled with conclusory allegations lacking plausibility**

26 As previously noted, a court accepts as true a plaintiff’s *well-pled* factual allegations and
 27 construes all factual inferences in the light most favorable to the plaintiff. *Manzarek v. St. Paul*
 28 *Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). The policy justification for

1 reading a complaint's allegations liberally is that a plaintiff often must sue before she has had
 2 the benefit of discovery and that defendants are frequently in a better position to know the
 3 details of how their acts caused the plaintiff's harm. However, this policy justification vanishes
 4 where the harm to the plaintiff is unclear. Thus, pleadings must raise the right to relief beyond
 5 the speculative level; a plaintiff must provide "more than labels and conclusions." *Twombly*,
 6 550 U.S. at 555.

7 The following allegations use mere labels and conclusions from which the Court can not
 8 discern *what* Plaintiffs' harm is, much less *who* has done *what* to *whom*.

- 9 • "Defendants have unlawfully used State Bylaws." FAC 27:5-6.
- 10 • "Defendants have refused to Certify [sic] Delegates who were properly elected." *Id.* at
 11 27:7-8.
- 12 • "[I]n almost every state in the United States[,] Defendants engaged in a scheme to
 13 intimidate and harass Delegates who were supporting a Candidate that Defendants did not
 14 approve of. This harassment included the use of violence, intimidating demands that
 15 Delegates sign affidavits under penalty of perjury with the threat of criminal prosecution
 16 for perjury as well as financial penalties and fines if the Delegate fails to vote as
 17 instructed by Defendants." *Id.* at 26:21-26.
- 18 • "Defendants have further harassed and intimidated Plaintiffs with untimely Rule changes
 19 designed to deny a quorum or to manipulate Delegates supporting a particular Candidate
 20 to be deprived of a fair election in furtherance of a scheme to deny Plaintiffs the right to
 21 vote their conscience on all ballots." FAC 26:27-28, 27:1-2.
- 22 • "Defendants have altered the voting ballot results to fraudulently reflect an outcome that
 23 is inconsistent with the actual voting ballot results for the purpose of certifying a
 24 fraudulently selected slate of Delegates to support the Candidate of Defendants [sic]
 25 choice rather than the Delegates properly elected all to prevent Plaintiffs from voting
 26 their conscience." *Id.* at 27:9-12.
- 27 • "[T]here is a systematic campaign of election fraud at State Conventions including
 28 programming a voting machine in Arizona to count Ron Paul votes as Governor Romney

1 votes; ballot stuffing, meaning the same person casting several ballots in several State
 2 Conventions; altering procedural rules to prevent votes being cast for Ron Paul, all as
 3 acts of intimidation to prevent National Delegates from voting their conscience.” *Id.* at
 4 33:10-15.

- 5 • “Bones have been broken. A gun has been used to threaten a Plaintiff to vote as ordered
 6 while inside of a school. Plaintiffs have been followed. Plaintiffs have been threatened
 7 with future life-time harassment if Plaintiffs do not vote as directed. Plaintiffs have been
 8 threatened to remove their names from this lawsuit or face adverse consequences.” *Id.* at
 9 34:12-16.

10 These allegations are all riddled with the same error. For example, Plaintiffs’ vague
 11 reference to “State Bylaws” gives this Court no inkling as to which of the 50 states and which of
 12 the millions of pages of bylaws Plaintiffs refer. Similarly, Plaintiffs’ use of the passive voice
 13 renders it impossible to discern who broke the bones of whom, who pointed a gun at whom, and
 14 whether any of the more than 100 Defendants were even involved. Finally, Plaintiffs’ vague
 15 allegations of voting ballot fraud occurring somewhere at sometime and apparently committed
 16 simultaneously by all “Defendants” lacks plausibility. While Plaintiffs make an oblique
 17 reference to a voting machine somewhere in Arizona, the lack of clarity in this allegation is
 18 insufficient to raise it to a level above mere speculation.

19 Thus, this Court does not accept these allegations as true. *See McHenry v. Renne*, 84
 20 F.3d 1172, 1176 (9th Cir. 1996) (affirming dismissal of complaint where lower court reasoned
 21 that complaint failed to “clearly and concisely explain[] which allegations are relevant to which
 22 defendants” and noted that the “purpose of the court system is not, after all, to provide a forum
 23 for storytelling or political griping, but to resolve legal disputes”).

24 **iii. The sole intelligible allegation is that a specific Defendant removed**
 25 **elected delegates who refused to vote for a particular nominee at the**
 26 **convention**

27 The sole allegation that is pled with some clarity is that the Defendant Republican Party
 28 of Massachusetts removed at least 17 elected delegates from the state delegation for the national

1 convention because those delegates refused to sign an affidavit promising to vote for a particular
 2 nominee. Specifically, Plaintiffs allege that “Plaintiff Renato D’Amico is a duly elected
 3 National Delegate from the State of Massachusetts who was unlawfully removed from the State
 4 Delegation when he refused to sign” an affidavit “presented by Defendant Republican Party of
 5 Massachusetts” requiring him to “swear[] under penalty of perjury that he would vote for
 6 Governor Romney.” FAC at 32. Plaintiffs also allege that, “[i]n Massachusetts[,] at least 17
 7 Delegates duly elected were ordered to sign” the same affidavit even though “no Party Rule . . .
 8 permits such an [a]ffidavit nor such an ultimatum, nor has said Defendant ever required such an
 9 [a]ffidavit in the past.” *Id.* Plaintiffs “request an order of this Court reinstating Plaintiff Renado
 10 D’Amico to his duly elected position as a Certified National Delegate and further requests that
 11 all Massachusetts Delegates be reinstated who were removed solely for refusing to sign the
 12 unlawful [a]ffidavit.” *Id.*

13 This pleading is the sole intelligible pleading in the FAC because the Court can at least
 14 discern who did what to whom. Thus, the Court will construe the FAC as making *only* this
 15 allegation and analyze *only* this allegation in the next section to determine whether Plaintiffs
 16 have stated a claim.

17 **c. Plaintiffs fail to state a claim under Section 1971(b) of the Voting Rights**
 18 **Act**

19 Defendants argue that a court order reinstating delegates would violate Defendants’ First
 20 Amendment right to exclude certain people from leadership positions in their party. Mot. 12-15.
 21 Defendants’ argument appears to be that Plaintiffs’ interpretation of the Voting Rights Act
 22 would violate Defendants’ First Amendment right to exclude, and thus this Court should not
 23 adopt Plaintiffs’ interpretation because it would render the Voting Rights Act unconstitutional.⁴

25 ⁴ The First Amendment limits *federal* encroachment on political parties’ right to exclude. This
 26 First Amendment right also limits *states’* encroachment on political parties’ nominee selection
 27 process because the First Amendment is incorporated by the Fourteenth Amendment against the
 28 states. *See Democratic Party of United States v. Wisconsin*, 450 U.S. 107, 122 (1981).

1 Recently, in *Northwest Austin Municipal Utility District No. One v. Holder*, the United
 2 States Supreme Court was confronted with a constitutional challenge to a different section of the
 3 Voting Rights Act not at issue here. *See* 557 U.S. 193, 205 (2009) (discussing challenge to 42
 4 U.S.C. §§ 1973b, 1973c). The Supreme Court chose to avoid addressing the constitutional issue
 5 and instead resolved the dispute through statutory interpretation. *Id.* The Court did so by
 6 invoking the canon of constitutional avoidance, which instructs courts to “not decide a
 7 constitutional question if there is some other ground upon which to dispose of the case.” *Id.*; *see*
 8 *also Simmons v. Galvin*, 575 F.3d 24, 42 (1st Cir. 2009) (following *Northwest Austin* to avoid
 9 reaching “the serious constitutional questions which . . . would be raised were we to adopt
 10 plaintiffs’ construction of the statute” because “courts, particularly in [Voting Rights Act] cases,
 11 should avoid deciding constitutional issues where statutory interpretation obviates the issue”).

12 This Court follows the United States Supreme Court’s direction in *Northwest Austin* and
 13 thus does not address the merits of Defendants’ argument that Plaintiffs’ interpretation of
 14 Section 1971(b) of the Voting Rights Act would be unconstitutional. As detailed below, the
 15 Court first describes the contours of Defendants’ First Amendment right to exclude. Second, the
 16 Court describes Plaintiff’s interpretation of the Voting Rights Act. Finally, the Court concludes
 17 that no authority supports Plaintiffs’ interpretation of Section 1971(b), but that that there are
 18 several indisputably constitutional *alternative* interpretations of Section 1971(b). Because
 19 Plaintiffs’ allegations do not state a claim under these alternative interpretations, the Court
 20 GRANTS Defendants’ Motion to Dismiss WITHOUT PREJUDICE.

21 **i. Political parties have a limited right to exclude people from**
 22 **membership and leadership roles**
 23
 24

25 Although Defendants’ right-to-exclude argument references both the First and the Fourteenth
 26 Amendment, the latter’s incorporation of the former against the *states* does not appear to be a
 27 relevant defense where, as here, Defendants appear to argue that a *federal* court’s order based on
 28 Plaintiffs’ interpretation of a *federal* law would violate Defendants’ right to exclude.

1 Political parties and their members have a First Amendment right to association free from
 2 federal encroachment; this right includes the “right to exclude” people from membership or
 3 leadership roles in the party in certain circumstances. *California Democratic Party v. Jones*,
 4 530 U.S. 567, 574, 120 S. Ct. 2402, 2408, 147 L. Ed. 2d 502 (2000) (“[A] corollary of the right
 5 to associate is the right not to associate.”); *New York State Bd. of Elections v. Lopez Torres*, 552
 6 U.S. 196, 202 (2008); *Democratic Party of United States v. Wisconsin*, 450 U.S. 107, 121
 7 (1981). This right to exclude includes the right to “choose a candidate-selection process that
 8 will in [the party’s] view produce the nominee who best represents its political platform.” *Lopez*
 9 *Torres*, 552 U.S. at 202. It also “encompasses a political party’s decisions about the identity of,
 10 and the process for electing, its leaders.” *Eu v. San Francisco Cnty. Democratic Cent. Comm.*,
 11 489 U.S. 214, 224, 229 (1989) (“Freedom of association means . . . that a political party has a
 12 right to identify the people who constitute the association . . . and to select a standard bearer who
 13 best represents the party’s ideologies and preferences.”) (quotation marks and citations omitted).

14 “In no area is the political [party’s] right to exclude more important than in the process of
 15 selecting its nominee.” *Jones*, 530 U.S. 567, 568 (2000). “That process often determines the
 16 party’s positions on the most significant public policy issues of the day, and even when those
 17 positions are predetermined it is the nominee who becomes the party’s ambassador to the
 18 general electorate in winning it over to the party’s views.” *Id.* “[B]eing saddled with an
 19 unwanted, and possibly antithetical, nominee would . . . severely transform” the party. *Id.* at
 20 579; *see also Eu*, 489 U.S. at 231 n.21.

21 Of course, “[n]either the right to associate nor the right to participate in political activities
 22 is absolute.” *Democratic Party of United States v. Wisconsin*, 450 U.S. 107, 124 (1981). For
 23 example, a political party’s right to exclude does not protect a party’s demand of ideological
 24 fealty from its members where such a demand violates other constitutional rights, such as the
 25 Fifteenth Amendment. *See Baskin v. Brown*, 174 F.2d 391, 392 (4th Cir. 1949) (holding that
 26 political party’s rules, including rule in which “voting in the primaries was conditioned upon the
 27 voter[] taking an oath that he believed in social and educational separation of the races,” violated
 28 the Fifteenth Amendment); *Morse v. Republican Party of Virginia*, 517 U.S. 186, 200 n.17, 228-

29 (1996) (citing *Baskin v. Brown* favorably as “in accord with the commands of the Fifteenth Amendment and the laws passed pursuant to it”); *Lopez Torres*, 552 U.S. at 203 (“These [associational] rights are circumscribed, however, when . . . , for example, the party’s racially discriminatory action may become state action that violates the Fifteenth Amendment.”).

The Voting Rights Act as enacted under Congress’ “power to enforce the provisions of the Fifteenth Amendment.” *City of Boerne v. Flores*, 521 U.S. 507, 518, 117 S. Ct. 2157, 2163, 138 L. Ed. 2d 624 (1997); *Shelby County, Ala. v. Holder*, 679 F.3d 848, 864 (D.C. Cir. 2012) (“[W]hen reauthorizing the [Voting Rights] Act in 2006, Congress expressly invoked its enforcement authority under both the Fourteenth and Fifteenth Amendments.”). “[W]hen Congress seeks to combat racial discrimination in voting—protecting both the right to be free from discrimination based on race and the right to be free from discrimination in voting, two rights subject to heightened scrutiny—it acts at the apex of its power.” *Shelby County*, 679 F.3d at 860; *see also City of Boerne v. Flores*, 521 U.S. 507, 518 (1997) (“Legislation which deters or remedies constitutional violations can fall within the sweep of Congress’ enforcement power even if in the process it prohibits conduct which is not itself unconstitutional.”). Thus, a political parties’ First Amendment right to exclude does not per se render the Voting Rights Act unconstitutional. *See Morse v. Republican Party of Virginia*, 517 U.S. 186, 214-15, 228 (1996) (rejecting political party’s argument that its First Amendment right to exclude trumped 42 U.S.C. § 1973c, a different section of the Voting Rights Act not at issue in this case.).

Furthermore, election laws often impose “some burden” on a First Amendment right to associate. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). The level of scrutiny with which a court reviews the challenged law depends on its effect upon the First Amendment right. *See id.* at 434. Currently, the standard of review applied in challenges to the Voting Rights Act “remains unsettled.” *Shelby County, Ala. v. Holder*, 679 F.3d 848, 859 (D.C. Cir. 2012) (noting that Supreme Court’s decision in *Northwest Austin* could be perceived as a “powerful signal” that the Supreme Court would depart from the “rationality” review it previously applied in *Katzenbach*); *see also Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 204 (2009) (declining to resolve parties’ disagreement “on the standard to apply in deciding whether . . .

1 Congress exceeded its Fifteenth Amendment enforcement power in extending the preclearance
 2 requirements” of 42 U.S.C. §§ 1973b and 1973c, Voting Rights Act sections not at issue here).
 3 However, courts attempting to determine the standard of review that applies have resolved this
 4 question “by using traditional principles of deferential review” to federal laws, including the
 5 canon of construction that such laws are entitled to a “presumption of validity.” *Shelby County*,
 6 679 F.3d at 861-62.⁵

7 Plaintiffs make literally no argument and cite no case law to explain what government
 8 interest their interpretation of Section 1971(b) serves. Because the American court system is an
 9 adversarial one, this Court may not make arguments on Plaintiffs’ behalf. But this is not to say
 10 that more complete briefing by Plaintiffs could not elucidate a governmental interest. Indeed, in
 11 *Lopez Torres*, the Supreme Court observed that “the State can require” and courts have
 12 previously “permitted States to [undermine] ‘party bosses’ by requiring party-candidate
 13 selection through processes more favorable to insurgents.” *See Lopez Torres*, 552 U.S. 196, 205
 14 (2008). Justice Scalia—hardly a champion of campaign finance reform—has even conjectured
 15 that a governmental interest may exist in crafting a nominee selection process that avoids
 16 “plac[ing] a high premium upon the ability to raise money.” *See id.* In addition, the Supreme
 17 Court has rejected a political party’s argument that its First Amendment right to exclude allowed

18
 19 ⁵ The Supreme Court has analyzed the constitutionality of the Voting Rights Act by employing
 20 rational basis review. *State of S.C. v. Katzenbach*, 383 U.S. 301, 324 (1966) (“Congress may
 21 use any rational means to effectuate the constitutional prohibition of racial discrimination in
 22 voting.”). Outside the context of the Voting Rights Act, the Supreme Court has held that, where
 23 the burden on the party’s First Amendment right is trivial, a rational relationship between a
 24 legitimate governmental interest and the law’s effect will render the law constitutional.
 25 *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 451 (2008). In
 26 contrast, where the burden is severe, the law must be narrowly tailored to serve a compelling
 27 state interest in order to be constitutional. *Id.*; *see also Nader v. Brewer*, 531 F.3d 1028, 1035
 28 (9th Cir. 2008).

1 it to condition delegate status on payment of a \$45 fee in violation of 42 U.S.C. § 1973c, which
 2 is a section of the Voting Rights Act not at issue in this case. *See Morse v. Republican Party of*
 3 *Virginia*, 517 U.S. 186, 214-15, 228 (1996).

4 The Court included the foregoing section to explain Defendant's First Amendment right
 5 to exclude and some of its limitations. However, the Court need not reach "the serious
 6 constitutional questions" raised if the Court were to adopt Plaintiffs' interpretation of the Voting
 7 Rights Act because "courts, particularly in [Voting Rights Act] cases, should avoid deciding
 8 constitutional issues where statutory interpretation obviates the issue." *Simmons v. Galvin*, 575
 9 F.3d 24, 42 (1st Cir. 2009).

10 **ii. Plaintiffs interpret the phrase "intimidate, threaten, or coerce" in**
 11 **Section 1971(b) of the Voting Rights Act to include a political**
 12 **party's conditioning of delegate status on a promise to vote for a**
 13 **particular nominee**

14 Plaintiffs appear to sue under Section 1971(b) of the Voting Rights Act. *See* FAC at
 15 26:3-7 (quoting language from Section 1971(b)). This section provides in relevant part that
 16 "[n]o person . . . shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce
 17 any other person for the purpose of interfering with the right of such other person to . . . vote as
 18 he may choose . . . for the office of President . . . [or] Delegates . . . at any general . . . or primary
 19 election held . . . for the purpose of selecting or electing any such candidate." 42 U.S.C. §
 20 1971(b).

21 Plaintiffs make no argument in their Opposition. However, the facts they allege suggest
 22 that Plaintiffs believe they can state a claim under Section 1971(b) because the phrase
 23 "intimidate, threaten, or coerce" encompasses Defendant Republican Party of Massachusetts'
 24 *conditioning* of delegate status upon the putative delegate signing an affidavit promising to vote
 25 for a particular nominee where no state law or party rule expressly authorizes said Defendant's
 26 act.

27 **iii. No authority supports Plaintiffs' interpretation of the Section**
 28 **1971(b) of the Voting Rights Act**

1 The Court has found only four dozen cases discussing Section 1971(b) of the Voting
 2 Rights Act. None of these cases interpret the phrase “intimidate, threaten, or coerce” as broadly
 3 as Plaintiffs urge. The Court reviews one such case, *U.S. by Katzenbach v. Original Knights of*
 4 *Ku Klux Klan* (“*Ku Klux Klan*”), to provide an example of an indisputably constitutional
 5 definition of the phrase “intimidate, threaten, or coerce” and to illustrate the kind of evils the
 6 Voting Rights Act was designed to encompass. In *Ku Klux Klan*, the court found that
 7 defendants’ “acts of economic coercion, intimidation, and violence directed at Negro citizens . .
 8 . for the purpose of deterring their registering to vote” violated Section 1971. 250 F. Supp. 330,
 9 355 (E.D. La. 1965). In *Ku Klux Klan*, defendants’ “coercive tactics” included a “six men . . .
 10 wrecking crew” to punish people as young as twelve years old who were “violating Southern
 11 traditions” by, for example, patronizing facilities that “allow[ed] Negroes to use White rest
 12 rooms.” *Id.* 338-40. Defendants went to a restaurant where “Negroes [were] seeking service”
 13 and entered “brandishing clubs, ordered the Negroes to leave and threatened to kill Sam Barnes,
 14 a member of the Bogalusa Voters League.” *Id.* at 341. Defendants “entered [a] park and
 15 dispersed the Negro citizens with clubs, belts, and other weapons” with “the purpose of
 16 interfering with the enjoyment of the park by Negroes and white CORE workers who were . . .
 17 using the facilities for the first time on a non-segregated basis.” *Id.* at 341-42; *see also U.S. v.*
 18 *McLeod*, 385 F.2d 734, 741 (5th Cir. 1967) (holding that defendant county officials’ “pattern of
 19 baseless arrests and prosecutions” of participants in black voter registration drive violated
 20 Section 1971(b)).

21 While these examples are not the *only* definitions of the phrase “intimidate, threaten, or
 22 coerce,” they at least demonstrate that there are several constitutional interpretations of Section
 23 1971(b) of the Voting Rights Act that do *not* violate Defendants’ First Amendment right.
 24 Plaintiffs do not allege any acts akin to those done by defendants in cases discussing Section
 25 1971(b). Nor do Plaintiffs make any argument or cite any case law or legislative history
 26 regarding Section 1971(b) to explain why the phrase “intimidate, threaten, or coerce” should be
 27 extended to the act at issue here, namely, a political parties’ *conditioning* of delegate status upon
 28

1 the putative delegate signing an affidavit promising to vote for a particular nominee where no
 2 state law or party rule expressly authorizes that affidavit.

3 Given that Plaintiffs do not allege any acts akin to the cases discussing section 1971(b),
 4 the Court GRANTS Defendants' Motion to Dismiss. In addition, because the Court grants
 5 Defendants' Motion to Dismiss, the Court also DENIES Plaintiffs' Ex Parte Application to
 6 Expedite Trial.

7 **d. This holding is extremely narrow**

8 The Court emphasizes the narrowness of its holding. Defendants advocate a constricted
 9 interpretation of Section 1971(b) of the Voting Rights Act. All too frequently, parties that urge
 10 a constricted interpretation of the Voting Rights Act do so to accomplish exactly that which the
 11 Voting Rights Act is designed to prevent: disenfranchisement of voters who historically have
 12 suffered discrimination. *See e.g., Ku Klux Klan*, 250 F. Supp. 330 (E.D. La. 1965). As
 13 numerous courts have recognized, such "discrimination in voting is uniquely harmful in several
 14 ways: it cannot be remedied by money damages and . . . lawsuits to enjoin discriminatory voting
 15 laws are costly, take years to resolve, and leave those elected under the challenged law with the
 16 benefit of incumbency." *Shelby County, Ala. v. Holder*, 679 F.3d 848, 861 (D.C. Cir. 2012).

17 This Court has no desire for its holding—which is reached under the limited facts of this
 18 case and without substantive legal argument by Plaintiffs—to be refashioned into a weapon
 19 wielded by those who wish to prolong the "blight of racial discrimination in voting, which has
 20 infected the electoral process in parts of our country for nearly a century." *See State of S.C. v.*
 21 *Katzenbach*, 383 U.S. 301, 308 (1966). There is a very real risk that those who employ
 22 discriminatory practices will use any legal argument available, including this Court's decision,
 23 to oppose future litigation brought under the Voting Rights Act. As Congress found when it
 24 reauthorized the Voting Rights Act in 2006, "between 1982 and 2005, minority plaintiffs
 25 obtained favorable outcomes in some 653 . . . suits" brought under a different section of the
 26 Voting Rights Act than that at issue here, and these lawsuits provided "relief from
 27 discriminatory voting practices in at least 825 counties." *Shelby County*, 679 F.3d at 868.
 28 Between 1982 and 2004, an additional "105 successful . . . enforcement actions were brought"

1 under another section of the Voting Rights Act. *Id.* at 870. Based on this evidence and
 2 extensive additional documentation, Congress found that “serious and widespread intentional
 3 discrimination persisted” and concluded that the work of the Voting Rights Act “is not yet
 4 done.” *Id.* at 872, 873.

5 To avoid this decision being misused, the Court emphasizes what this case is not. This is
 6 *not* a case in which Defendants’ conditioning of delegate status is based on a racial motive or
 7 has a disparate impact on minority voters. This is *not* a case alleging abuse of government
 8 officials’ authority. This is *not* a case where Defendants’ acts were accomplished through
 9 violence or economic coercion, given that Plaintiffs’ allegations regarding broken bones and
 10 guns are inadequately pled. Finally, this is *not* a case alleging a violation of a specific law (other
 11 than 42 U.S.C. § 1971(b)) or specific party rule, given that Plaintiffs’ allegations regarding
 12 unspecified “State Bylaws” are unintelligible. Thus, the Court’s extremely narrow holding in
 13 this case leaves unscathed both the Voting Rights Act and political parties’ First Amendment
 14 right of association.


15 **IV. Disposition**

16 For the foregoing reasons, the Court GRANTS Defendants’ Motion to Dismiss.
 17 However, the Court dismisses WITHOUT PREJUDICE. The Court will afford Plaintiffs a third
 18 and final opportunity to attempt to sufficiently plead a violation of Section 1971(b) of the
 19 Voting Rights Act. *See Schreiber Distributing Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393,
 20 1401 (9th Cir. 1986).

21 Because the Court grants Defendants’ Motion to Dismiss, the Court also DENIES
 22 Plaintiffs’ Ex Parte Application to Expedite Trial [16].

23 Plaintiffs shall file an amended complaint, if at all, on or before August 20, 2012.

24
 25 DATED: August 7, 2012

26 
 27 _____
 28 DAVID O. CARTER
 UNITED STATES DISTRICT JUDGE